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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,992	12/13/2001	Densen Cao	5061.2 P	6784

7590

07/27/2005

Parsons, Behle & Latimer

Suite 1800

201 South Main Street

P.O. Box 45898

Salt Lake City, UT 84145-0898

EXAMINER

LEWIS, RALPH A

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/016,992	Applicant(s) CAO, DENSEN	
	Examiner Ralph A. Lewis	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-10 and 12-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-10 and 12-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Obvious-type Double Patenting Rejections

In light of the change in claimed subject matter and the recent issue of related patents the following new grounds of obvious-type double patenting is applied herein. The examiner regrets not applying the rejections with the earlier Obvious-type double patenting rejection which applicant overcame with a terminal disclaimer.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-5, 7-10 and 12-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over

claims 1-11 of U.S. Patent No. 6,755,648,
claims 1-7 of U.S. Patent No. 6,910,886,
claims 1-20 of U.S. Patent No. 6,755,649,
claims 1-20 of U.S. Patent No. 6,780,010,
claims 1-20 of U.S. Patent No. 6,719,558,
claims 1-20 of U.S. Patent No. 6,719,559,
claims 1-60 of U.S. Patent No. 6,799,967, and
claims 1-37 of U.S. Patent No. 6,824,294,

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and provisionally rejected under the doctrine of obvious-type double patenting as being unpatentable over

claims 25-27 and 31 of U.S. application SN 10/017,454,
claims 18-22 of U.S. application SN 10/071,847,
claims 1-18 of U.S. application SN 10/072,302,
claims 1-3 of U.S. application SN 10/072,462,
claims 1-18 of U.S. application SN 10/072,613,
claims 1-19 of U.S. application SN 10/072,635,
claims 1-20 of U.S. application SN 10/072,659,
claims 1-23 of U.S. application SN 10/072,826,
claims 1-5, 8-15, 17-20 of U.S. application SN 10/072,850,
claims 1-10, 21 of U.S. application SN 10/072,852,
claims 18, 20-24 of U.S. application SN 10/072,858,
claims 21-31 of U.S. application SN 10/073,672,
claims 1-8, 10-20 of U.S. application SN 10/073,822,
claims 1, 6, 11-13, 15, 18 of U.S. application SN 10/073,823,
claims 1, 2, 5-7, 9, 13, 14, 17, 19, 20 of U.S. application SN 10/188,449,
claims 1-27 of U.S. application SN 10/189,224,
claims 1-35 of U.S. application SN 10/189,255,
claims 1-30 of U.S. application SN 10/189,307, and
claims 1-21 of U.S. application SN 10/189,307.

Although the conflicting claims are not identical, they are not patentably distinct from each other because one of ordinary skill in the art would have found the differences between the claimed subject matter obvious.

Allowable Subject Matter

Claims 1-5, 7-10 and 12-17 would be allowable upon the filing of a terminal disclaimer to overcome the obvious type double patenting rejection above.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.


For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Ralph Lewis** at telephone number **(571) 272-4712**. Fax (703) 872-9306. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Kevin Shaver, can be reached at (571) 272-4720.

R.Lewis
July 25, 2005



Ralph A. Lewis
Primary Examiner
Au3732